Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
LCI Petition for Expedited Declaratory Rulings	)	CC Docket No. 98-5
	)	
	)	

AT&T Reply

Pursuant to the Commission's Public Notice (DA-98-130, released January 26, 1998), AT&T Corp. ("AT&T") submits this reply to the comments on the petition of LCI International Telecom Corp. ("LCI") for expedited declaratory rulings relating to Bell Operating Company ("BOC") petitions for in-region interLATA authority pursuant to Section 271 of the Communications Act (the "Act").[1]

Summary

The comments demonstrate two critical points. First, the vast preponderance of commenters, including AT&T, support a careful review of LCI's and other parties' proposals for addressing incumbents' inherent conflicts of interest under the Act. Real market experience reported by AT&T, LCI and other CLECs shows that these conflicts have significantly reduced ILECs' incentives to cooperate in opening their local service monopolies. This, in turn, has

[1] A list of the commenters and the abbreviations used to refer to each is set forth in Attachment 1.

substantially hindered CLECs' efforts to fulfill the Act's main objective -- the development of effective competition in the local services marketplace.

Second, many commenters -- including most BOCs -- correctly show that there is no legal or practical substitute for full compliance with Section 271 before a BOC may enter the in-region interLATA market. Thus, any "presumption" resulting from a BOC's voluntary decision to implement one of the structural separation proposals must be carefully defined and may not rewrite the Act.

Argument

I. The LCI and Other Proposals Highlight the Incumbents' Inherent Conflicts of Interest.

LCI's petition has brought into clear focus a significant problem that helps to explain why local competition has been so slow to develop, i.e., incumbents' inherent conflicts of interest. These conflicts have significantly diluted the ILECs' economic incentives to surrender the local service monopolies that the Act intended to eliminate.[2] LCI's petition provides the Commission with an opportunity to face this critical problem directly.

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[2] See, e.g., Ad Hoc, p. 5 ("It seems that the RBOCs hope to enter the in-region long distance market by doing no more than the barest minimum that the Commission requires with respect to facilitating the use of their networks and services to support the growth of [local competition]").

Contrary to the BOCs' claims, real world experience shows that ILECs' monopolies have not been broken, and that consumers now have no real choice of local service providers. As the State Advocates explain, such experience shows that

> "LCI [has] properly [brought] before the [FCC] the problem that [CLECs] have established such a small customer base that local competition has brought consumers very little benefit. . . . [Although] the Act was meant to provide consumers with competitive benefits . . . little in the way of competitive benefits have been realized so far."[4]

Virtually all the non-BOC commenters, including consumer advocates from more than 10 states, agree that there should be further Commission action on this critical subject.[5] Some commenters, including AT&T (pp. 7-10), have raised specific questions regarding particular aspects of LCI's structural proposal.[6] Others favor the "LoopCo"

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[3] E.g., Bell Atlantic, pp. 2-4.

[4] State Advocates, pp. 1-2.

[5] AT&T, p. 10; State Advocates, p. 7; West Virginia Consumer Advocate, pp. 2-3 ("unless and until the RBOCs deal with their own network operations at arm's length, and on an equal footing with other competing local exchange carriers, competition will likely remain a theoretical abstract"); Ad Hoc, p. 3 ("the Commission . . . must accept the responsibility to create the right package of incentives"); Cable & Wireless, p. 2; CompTel, p. 17 ("Immediate action by the FCC is needed to put local competition back on track"); Excel, p. 2; FiberNet, p. 2; ICG, p. ii; KMC, pp. 16-17; Level 3, pp. 18-19; LoopCo, p. 4; MCI, p. 3; RCN, pp. 17-18; TRA, p. 19; WorldCom, p. 7.

[6] E.g., ICG, pp. 10-17; KMC, pp. 7-11; RCN, pp. 7-12.

approach to structural separation,[7] while still others propose additional methods for addressing this fundamental problem.[8] As WorldCom (p. 3) notes, however, "[f]or present purposes, the similarities [of the approaches] are more important than the differences." All are designed to deal with the same core problem, i.e. that incumbents

> "control bottleneck facilities; that downstream (retail) service providers cannot deploy widespread service on an economically viable basis without access to those facilities; and that as long as the BOC is competing with those downstream providers it will have an irresistible incentive to favor its own retail operations." (Id.)

Appropriate restructuring with adequate separate ownership could help to change the incentives which otherwise impel integrated ILECs to seek ways to thwart effective competition. A separate "wholesale" entity that controls the local network and OSS would have an incentive to implement the requirements of Section 251 and 271 to encourage maximum interconnection and use of its facilities by its carrier (LEC, CLEC and IXC) customers. The separate "retail" entity would step into the shoes of CLECs and IXCs that need unbundled elements, services and OSS to make their

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[7] Under this approach, the separation is based on specific physical elements in the network, rather than on the retail and wholesale operations of the BOC and its affiliates. See, e.g., MCI, pp. 17-19; Level 3, pp. 9-13; LoopCo, pp. 2-4.

[8] E.g., KMC, p. 12; Level 3, pp. 15-16.

retail operations viable, especially if it can only deal with the wholesaler on the same terms and conditions as its competitors.

Thus, the Commission should fully investigate the structural separation proposals made by LCI and by other commenters. It should also entertain any other creative proposals that could provide BOCs (and other ILECs) appropriate incentives to permit effective competition in their local service and access markets, as the law commands. Accordingly, AT&T urges the Commission immediately to commence, and promptly to conclude, a proceeding to adopt rules that will provide BOCs and other ILECs with maximum incentives to achieve the Act's local competition goals.

II. The Requirements of Section 271 are Mandatory and Cannot Be Ignored.

Regardless of how the Commission responds to LCI's and other parties' structural proposals, it must not lose sight of its statutory duties under Section 271. Many commenters, including four RBOCs, agree with AT&T (p. 11) that the Commission's duty under that section is to determine whether a BOC has met the competitive checklist, public interest and other standards of the Act. As AT&T noted (id.), this is the only way the Commission can assure that a BOC has irreversibly opened its local markets to effective competition from carriers seeking to use all of the means of competitive entry contemplated by the Act.

For example, Ameritech (pp. 17-18) correctly states,

> "under the Act the BOCs have the burden of proving they have met each competitive checklist item. . . . [T]he Commission cannot swap structural separation for proof that an RBOC has met each and every one of the competitive checklist requirements. . . . [LCI's proposed rebuttable presumption] does not relieve a BOC of its duty to prove that it met all the checklist requirements, nor does it prevent any party from objecting to the lack of relevant evidence on any item, or otherwise claiming that the BOC has failed to meet it" (emphasis added).

Similarly, BellSouth (p. i) acknowledges that "Bell companies will always have to fulfill the same statutory requirements for interLATA relief regardless of whether they choose to divide their local operations as LCI suggests. The Commission is just as powerless to reduce the checklist requirements as to increase them" (emphasis added). Indeed, BellSouth (p. 5) recognizes that "under the plain language of the Act, '[t]he Commission shall not approve' a Bell company's application for interLATA relief 'unless it finds that' each of Congress's specified criteria are met."[9]

Numerous other commenters agree that a BOC must demonstrate compliance with all of the tests of Section 271

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[9] See also Bell Atlantic, p. 5 ("Congress wrote a specific fourteen point checklist that Bell Operating Companies must meet to qualify for long distance entry. The Commission may not rewrite the checklist requirements for long distance entry"); SBC, p. 25 (Congress chose "to specify a detailed list of things a BOC must prove it has done").

before it enters the in-region interLATA market. For example, the State Advocates (p. 6) acknowledge that "whether or not the corporate restructuring that LCI intends is accepted by the Commission, the statutory Section 271 requirements will remain." The West Virginia Consumer Advocate (p. 4) echoes this view, stating, that "actual competition and compliance with Section 271 remains the only acceptable benchmark for RBOC entry into the interLATA market." Similarly, Ad Hoc (p. 3) urges the Commission to remain determined "to fully apply all of the requirements of Section 271 without yielding to pressure to look the other way."[10]

Thus, mere restructuring cannot take the place of the requirements of Sections 251 and 252 (and Section 271 for BOCs). It can, however, properly be taken into account in evaluating evidence on how effectively an ILEC has complied with the statute's requirements. For example, an ILEC's restructuring may be used in assessing the weight of the evidence regarding its performance under Section 251. Similarly, a BOC's decision to restructure could be taken into account in determining whether it has performed a

[10] See also CompTel, p. 4 (Commission "must remain vigilant" in applying "existing Section 271 standards and procedures"); Excel, p. 7 (LCI petition is not a replacement for the statute); MCI, p. 14.

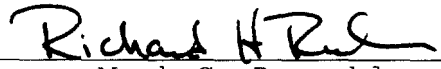
checklist item or met the public interest test. However, no "presumption" may lawfully relieve a BOC of its obligation to prove that it has met each item on the competitive checklist and that its entry into the in-region interLATA market would be in the public interest.

Conclusion

Local competition has been stymied in large part because incumbents have enormous economic incentives to preserve their lucrative local monopolies. LCI's petition provides the Commission with a vehicle to develop appropriate means to address this critical issue. In so doing, however, the Commission may not abandon its statutory duties under Section 251 or 271. Thus, no presumption can relieve a BOC of its statutory duty to establish that it has complied with the competitive checklist and the public interest test.

Respectfully submitted,

AT&T CORP.

By 

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April 22, 1998

Attachment 1

List of Commenters, CC Docket No. 98-5

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Bell Atlantic
BellSouth Corporation
Cable & Wireless, Inc.
Campaign for Telecommunications Access
Competitive Telecommunications Association ("CompTel")
Excel Telecommunications, Inc. ("Excel")
Fibernet Telecom, Inc. ("FiberNet")
ICG Telecom Group ("ICG")
KMC Telecom, Inc. ("KMC")
LCI International Telecom Corp. ("LCI")
Level 3 Communications, Inc. (Level 3")
LoopCo
Keith Maydak
MCI Telecommunications Corporation ("MCI")
Oklahoma Corporation Commission
Division of the Ratepayer Advocate, State of New Jersey
RCN Telecom Services, Inc. and Cleartel Communications, Inc.("RCN")
SBC Communications, Inc. ("SBC")
The State Consumer Advocates ("State Advocates") of
Missouri, Maine, Iowa, California, Ohio, New York,
Maryland, South Carolina, Texas, Pennsylvania
Telecommunications Resellers Association ("TRA")
U S West, Inc.
West Virginia Consumer Advocate
WorldCom, Inc.

CERTIFICATE OF SERVICE

I, Rena Martens, do hereby certify that on this 22nd day of April, 1998, a copy of the foregoing "AT&T Reply" was served by U.S. first class mail, postage prepaid, to the parties listed on the attached service list.

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